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In re Application of
HACKL
Application No.: 09/762,143
PCT No.: PCT/IB99/01516
Int. Filing Date: 02 August 1999
Priority Date: 31 July 1998
Attorney Docket No.: WLH-7945US
For: METHOD AND PLANT FOR PYROLIZING:
HYDROCARBON-CONTAINING WASTE
PRODUCTS

DECISION ON
PETITION UNDER 37 CFR 1.181

This is a decision on applicant's "Petition under 37 CFR 1.8(b)" filed in the United States Patent and Trademark Office (USPTO) on 05 March 2004. The petition is being treated as a petition under 37 CFR 1.181, requesting acceptance of documents filed on 06 April 2001 for completion of the application. No petition fee is required. This is also responsive to applicant's request for a refund of \$130 petition fee, filed in the USPTO on 16 March 2004, which is granted.

BACKGROUND

On 31 January 2001, applicant filed a Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Filing Under 35 U.S.C. 371 (Form PTO 1390) along with, *inter alia*, the basic national fee and executed declaration.

On 14 March 2001, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants indicating that the English translation of the international application and the processing fee for filing the translation after the thirty month period was required.

On 06 April 2001, in response to the Notification of Missing Requirements, applicant filed the English translation of the international application. The \$130 processing fee for filing the English translation after the 30 month period was charged to applicant's credit card on 06 April 2001.

On 16 July 2001, a decision on the submission of the executed declaration was mailed to applicant, refusing to accord the application status under 37 CFR 1.42 at that time. The decision stated that the declaration was signed by Eva Maria Hackl as heir. However it is unclear whether Ms. Hackl is the sole heir or the legal representative for the deceased inventor (See MPEP §409.01(a)) or whether there may be other heirs who are also required to also sign the declaration. In the alternative, applicant's attorney could file a statement certifying that Eva Maria Hackl is the only heir or the legal representative of the deceased inventor, Leopold Hackl. Applicant was given two months to respond to the Office action and advised that

failure to respond would result in abandonment of the application.

On 24 February 2004, a Notification of Abandonment was mailed to applicant, incorrectly indicating the reason for the abandonment was that no reply was received in response to the 14 March 2001 Notification of Missing Requirements.

On 22 March 2004, applicant, in response to the Notification of Abandonment, filed a the instant petition including a copy of postcard bearing a USPTO mail room date-stamped of 06 April 2001 indicating that a certified English translation of the international application was deposited on that date with the USPTO.

DISCUSSION

At the outset it is noted that no reply to the decision mailed on 16 July 2001 is located in the application file. The declaration submitted on 31 January 2001 remains unacceptable as it is not in compliance with 37 CFR 1.497(a) and (b).

A review of the application file reveals the English translation of the international application is located in the file and is date-stamped 06 April 2001. A review of the finance records for 09/762,143 indicates that the \$130 processing fee for filing the English translation after the thirty month period was paid on 06 April 2001.

A review of the finance records for this application also indicates that a petition fee of \$130 was erroneously charged to applicant's credit card on 05 March 2004. No petition fee is required and the \$130 petition fee will be credited to applicant's credit card account.

CONCLUSION

The petition under 37 CFR 1.181 is **MOOT**. The English translation of the international application filed on 06 April 2001 is located in the application file. The \$130 petition fee charged on 05 March 2004 will be credited to applicant's credit card account.

However the application remains abandoned as no reply to the decision mailed on 16 July 2001 has been filed. For the reasons previously stated, the declaration submitted on 31 January 2001 is unacceptable as it does not meet the requirements of 37 CFR 1.497(a) and (b).

The application will be held in the PCT Legal Office to await applicant's reply.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.


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